STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED March 14, 2006
v	No. 258015 Jackson Circuit Court
JEFFREY SHERWOOD PRICE, Defendant-Appellant.	LC No. 03-004726-FC

Before: Smolenski, P.J., Whitbeck, C.J., and O'Connell, J.

PER CURIAM.

Following a jury trial, defendant was convicted of two counts of criminal sexual conduct, second degree (CSC II), MCL 750.520c(1)(a). The trial court sentenced defendant as an habitual offender, second offense, to 150 to 270 months' imprisonment. Defendant appeals as of right challenging the voluntariness of his custodial statements as well as his sentence, which was an upward departure from the recommended minimum sentence. We affirm.

Defendant contends that the trial court erred in holding that his statements were made voluntarily. We disagree. A defendant's statements during custodial interrogation are inadmissible unless the prosecution can show, by a preponderance of the evidence, that the defendant voluntarily, knowingly, and intelligently waived his/her rights. *People v Tierney*, 266 Mich App 687, 707; 703 NW2d 204 (2005). Whether a statement was made voluntarily depends on the totality of the circumstances. *People v Cipriano*, 431 Mich 315, 333-334; 429 NW2d 781 (1988). This Court reviews de novo a trial court's legal determination that a statement was made voluntarily. *Tierney, supra*. However, we will not disturb a trial court's factual findings unless they are clearly erroneous. *People v Akins*, 259 Mich App 545, 563; 675 NW2d 863 (2003).

Defendant contends that his statements were not made voluntarily because he was deprived of sleep for sixteen days[1] before the interview, and he was told that if he cooperated the

[1] The allegations of sleep deprivation arose from defendant's testimony that, after his arrest in Alabama, he asked one of his escorting officers "if he would just let me out of the van and I can run and he can shoot me." According to defendant, he was put on suicide watch and held in a cell with constant lighting and no mattress. Ten days later, and after defendant undermined a move to a normal cell by banging his head against a wall, he was sent to Michigan. Defendant (continued…)

police officer would try to find him a bed. However, the trial court heard the evidence and found that defendant was not coerced or improperly induced to make the statement. Because we are not persuaded that the trial court made a mistake, we defer to its findings. *People v Geno*, 261 Mich App 624, 628-629; 683 NW2d 687 (2004); *Akins*, *supra* at 564. Similarly, we reject defendant's contention that the delay between his arrest and his arraignment impugns his statements. Our Supreme Court has held that "an otherwise competent confession should not be excluded solely because of a delay in arraignment." *Cipriano*, *supra* at 335.

Defendant next contends that the trial court erred in departing from the sentencing guidelines because the sentencing guidelines inadequately addressed defendant's prior sexual offenses and because he committed the instant crimes only six months after serving the maximum sentence on a prior CSC II conviction. We disagree.

Generally, the trial court is required to impose a minimum sentence that falls within the statutory sentencing guidelines range. MCL 769.34(2); *People v Babcock*, 469 Mich 247, 255-256; 666 NW2d 231 (2003). The trial court may depart from the range established by the sentencing guidelines only if there is a "substantial and compelling reason" for doing so. MCL 769.34(3). Further, the trial court "shall not base a departure on an offense characteristic or offender characteristic already taken into account in determining the appropriate sentence range unless the court finds from the facts contained in the court record, including the presentence investigation report, that the characteristic has been given inadequate or disproportionate weight." MCL 769.34(3)(b).

The trial court sentenced defendant to a minimum of 150 months' imprisonment, an upward departure of 43 months from the guidelines' highest minimum sentence. At the sentencing hearing, the trial court explained that:

> some previous sexual offenses . . . haven't specifically scored for being sexual offenses. You re-offended very quickly after being released on parole. I don't think those factors are adequately scored under the guidelines. I think this is a case for exceeding the guidelines and I'm doing it for those two reasons because I don't think those factors are adequately scored and I think this is a case in which society needs to be protected.

Defendant has an extensive criminal history that includes convictions for CSC II, indecent and obscene conduct, and indecent exposure. Defendant committed the instant offenses only six months after completing a maximum sentence for his previous CSC II conviction. The victim in this case is the twelve-year-old stepsister of one of defendant's nieces, and the victim in the first case was one of defendant's nieces who was only five years old. The trial court correctly concluded that there was an overwhelming need to protect society from defendant, who

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(…continued)

testified that he did not get any sleep on the five-day trip because he could not lie down in the extradition van, but he admitted that the trip included one night in an Indiana jail. Defendant was again placed in a special cell in Michigan, and the interview was conducted the following day.

quickly resumed to a pattern of criminal sexual behavior against children even after serving a maximum prison sentence for a previous CSC II conviction.

The trial court based its departure on these objective and verifiable factors, and we agree that those factors were not adequately addressed under the sentencing guidelines. Moreover, the reasons set forth by the trial court constitute substantial and compelling reasons for departing from the sentencing guidelines, so the trial court did not abuse its discretion in departing from the minimum sentence range. *Babcock*, *supra* at 265.

Finally, defendant contends that the trial court sentenced defendant in violation of *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004). However, defendant failed to preserve this issue in the trial court, so we will not reverse his conviction unless we find plain error that affected his substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). In *People v Claypool*, 470 Mich 715, 730 n 14; 684 NW2d 278 (2004), the Michigan Supreme Court held that *Blakely* does not affect Michigan's indeterminate sentencing scheme. Therefore, we hold that defendant has failed to demonstrate plain error affecting his substantial rights. *Carines*, *supra*.

Affirmed.

/s/ Michael R. Smolenski
/s/ William C. Whitbeck
/s/ Peter D. O'Connell